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CURRENT TOPICS

Appeal by Declaration

THE High Court asserted its power on 31st March in a case which may hereafter take a leading place in English legal history. In *Barnard and Others* v. *National Dock Labour Board and Silvertown Services, Ltd.* (*The Times*, 1st April), notwithstanding the decision of an appeals tribunal set up under the Dock Workers (Regulation of Employment) Scheme, 1947, that the suspensions of nine journeymen lightermen from work were valid, the Court of Appeal (SINGLETON, DENNING and ROMER, L.JJ.) granted a declaration that the suspensions were a nullity. The limits to the right to such a grant were pointed out by Singleton, L.J. It is in the discretion of the court, the power must be used sparingly and it must not be used whenever a tribunal makes a mistake, but only in order to prevent injustice. In the vast majority of cases, Denning, L.J., said, the courts would not seek to interfere in the decisions of statutory tribunals, but authorities showed that there was power to do so not only by certiorari but also by declaration. Romer, L.J., said that *prima facie* there was a right of everybody in this country who was involved in a legal dispute to have that dispute determined by the courts. The legal dispute in this case was whether the port manager who issued the notices of suspension had power to do so. The Court of Appeal held that he had no such power; disciplinary power remained with the local London Board, who had no power to delegate it. Where mistakes of law occur in the decisions of departmental tribunals, the decision in this case may be regarded as a charter to persons to whom the remedy of certiorari is not available.

Solicitors' Remuneration

GUIDANCE on a number of matters arising out of the Solicitors' Remuneration Order, 1953, is given by the Council of The Law Society in the April issue of the *Law Society's Gazette*. Where a local authority acquires land, the title to which has not been registered, the Council point out that the vendors' solicitors' costs are, in the absence of a special agreement, normally computed under Sched. II. There is an increasing tendency to pay scale charges, and discussions are now taking place between The Law Society and the various local government bodies in order to consider the adoption by local authorities in all these cases of an appropriate scale. While these discussions proceed, it would, in the Council's view, be reasonable (except in cases where the consideration is small and the scale inadequate having regard to all the circumstances) for vendors' solicitors to ask acquiring authorities to pay scale charges. The Council also state that para. 2 of the 1953 Order now provides for the first time that a solicitor may make a Sched. II charge for negotiating a lease in addition to the charge for the lease itself. In deciding what to charge, the Council advise that solicitors should bear in mind the scales of charges laid down by the estate agency bodies for this work and the fact that

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for negotiating sales and purchases the revised scales suggested by the Council to the statutory committee were rather below the scales fixed for that work by the estate agency bodies.

Estate Duty on Claims against the £300m. Fund

ASSUMING that the Town and Country Planning Bill becomes law, estate duty will not now be levied on claims against the £300m. fund established under Pt. VI of the Town and Country Planning Act, 1947, announced Mr. JOHN BOYD-CARPENTER, the Financial Secretary to the Treasury, in the Commons on 2nd April. Claims against the fund had been regarded as property the payment of duty on which could be deferred under the Finance Act, 1894, s. 6 (3), until their actual amount was known, he said, and duty on most of these claims passing on a death had been deferred accordingly. In the relatively few cases in which duty had already been paid the Estate Duty Office would be prepared, on application after the new Act should become law, to repay the duty with interest.

Servicemen's Estates

THE termination of the practice, begun during the war, by which all members of the armed forces were regarded as being on active service against an enemy, and their estates given relief from estate duty, was announced by the FINANCIAL SECRETARY TO THE TREASURY in a written reply in the Commons on 1st April. In the case of deaths of members of the armed forces occurring as from 1st April, 1953, from a wound inflicted, accident occurring or disease contracted or aggravated on or after 1st April, 1953, the exemption conferred by the Finance Act, 1952, s. 71, will be given, in accordance with the terms of that section, only where the death occurred on service in Korea or Malaya in present circumstances or on service which, in the opinion of the Treasury, involved the same risks as service of a warlike nature. The position of deaths occurring after that date from causes arising before it will remain unaffected.

Companies' Annual Returns

DIFFICULTY is frequently experienced by the Registrar of Companies in obtaining the correct completion of annual returns of companies with a share capital so as to show the full Christian names or forenames of shareholders in addition to their surnames, as required by the Companies Act, 1948, Sched. VI, Pt. I, para. 5. The registrar, as at present advised, is of the opinion that the insertion of initials only of Christian names or forenames is not a sufficient compliance with the provisions of the Act (see *Eidsforth* v. *Farrer* (1846), 4 C.B. 9). It is pointed out that the requirement for the showing of Christian names is not a new one, having existed under the 1908 and 1929 Acts.

The Coronation Amnesty

THE extension of the Coronation Amnesty to over 400 deserters from the armed forces who have mistakenly claimed the concession in the belief that they were entitled to it has been announced by the HOME SECRETARY. These were men who deserted either before 3rd September, 1939, or after 15th August, 1945, the limiting dates specified in the original statement by the PRIME MINISTER, who, as a master of our language, might be excused for feeling a pained surprise that he should be misunderstood over so clear a matter. Army and R.A.F. deserters will be required to sign a confession in the prescribed form, when an order will be made dispensing with trial by court martial; corresponding treatment will be given to naval deserters. These deserters are in the same position as regards "consequential" and other offences as deserters whose applications were correctly made (see p. 216, *ante*). It is now too late for those who understood the Prime Minister correctly, or others, to apply for the amnesty unless they actually deserted between the above two dates, since the closing date for mistaken applications was the day of the Home Secretary's announcement, 1st April. Men in civil life who mistakenly claim amnesty after that date remain liable for arrest and prosecution for desertion. Men who remembered the other two dates correctly should have no difficulty, however, with this one.

Coal Industry Nationalisation: Compensation

UNDER reg. 15 of the Coal Industry Nationalisation (Satisfaction of Compensation) Regulations, 1947, cases are specified in addition to those in s. 21 (1) (*a*) and (*b*) of the Coal Industry Nationalisation Act, 1946, in which compensation is, to the extent specified, to be satisfied by a money payment instead of by the issue of stock. On 1st April, 1953, the Coal Industry Nationalisation (Satisfaction of Compensation) (Amendment) Regulations, 1953, came into operation. Under these regulations, where the compensation or the balance thereof is ascertained and does not exceed £2,000, or is certified by the Ministry of Fuel and Power as unlikely to exceed that sum, the compensation, or the unsatisfied balance, is to be satisfied by a money payment.

Ancient Documents in a Solicitor's Office

WE are indebted to the *News Chronicle* of 31st March, 1953, for the news that documents about land deals dating back to 1310 have been found in a solicitor's office at Plymouth. The archivist in charge of manuscripts in Plymouth library, Mr. ALLEN CHINNERY, who received them, said that they were the earliest local documents in their possession, and they meant that they had about ten times as much information about early Plymouth as they had before. He added: "They are just workaday documents about land transactions, but the lists of names and places on them mean a tremendous amount. Fortunately they are in very good condition. The penmanship is first class, as they come from a very legible period of handwriting." There are twenty-two documents, about 12 inches by 6 inches, dating from 1310 to 1415 and written in Latin. "They were probably handed in for safe keeping with other family papers a very long time ago."

Going to a Solicitor

AT the annual meeting of the Birmingham Law Society on 25th March, Mr. G. CORBYN BARROW, the retiring president, said: "We have the Poor Man's Lawyer Association and the committee set up under the Legal Aid and Advice Act, but there is still an appalling tendency on the part of the public not to go to a solicitor early enough for him to be of use to them. There are many cases in which there should have been consultation with a solicitor before, say, a certain contract was signed. If this society could arrange for solicitors to give initial advice for a specified fee, and advertised the fact, it would provide one of the best services that any profession has to offer. We solicitors want our more friendly face to be seen by the public. I am convinced that such a service would in the long run be of great benefit to our profession as well as to the public."

A Conveyancer's Diary

THE MATRIMONIAL HOME AND THE DESERTED WIFE—II

THERE are two distinct aspects of the problem which face anyone who attempts to analyse the rights conferred by law upon a deserted wife in relation to the matrimonial home. First, what is the nature of these rights when they are asserted against the husband? This is a question of matrimonial law, which arises in proceedings for a matrimonial remedy such as divorce, maintenance or an application under s. 17 of the Married Women's Property Act, 1882, and although, of course, any analysis which is made of the deserted wife's rights in cases where a remedy of this kind is sought cannot but throw some light on the other aspect of this problem, the conveyancer is not directly concerned with these cases. Secondly, what is the nature of the deserted wife's rights in relation to the matrimonial home when these rights are asserted not against the husband but against a stranger, such as a purchaser for value from the husband? This is the conveyancer's problem with which these articles are principally intended to deal.

The first of the recent cases bearing on this subject is *Thompson* v. *Earthy* [1951] 2 K.B. 596. It is also the simplest. *H* married *W* in 1935 and they went to live in a house belonging to *H* which was the subject of the dispute. In 1946 *H* deserted *W*, and *W* applied for maintenance for herself and the children of the marriage. The justices, on the undertaking of *H* to allow *W* and the children to remain in occupation of the house rent free, ordered *H* to pay "£1 a week only" for *W*'s maintenance, and "5s. a week only for each of the children." (I take these words from the statement of facts in the report of the case in the Law Reports. The inference intended to be drawn from them, presumably, is that but for the undertaking the monetary payment would have been increased, but as the actual decision went nothing, I think, turned on this point, and I only mention it here because it may otherwise mislead.) In 1950 *H* sold the house to the plaintiff, who sought an order for possession against *W*. *W* resisted the plaintiff's claim on the ground that the plaintiff's title was subject to her interest, and that she, *W*, was entitled to remain in possession until *H*, the vendor, provided her and the children with an alternative home.

The case came before Roxburgh, J., sitting as an additional judge of the King's Bench Division, and his judgment was short, and may be summarised even more shortly. After referring to the passage from the judgment of Denning, L.J., in *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311, which I cited in my previous article on this subject a fortnight ago, he went on as follows: "But this is not a case between husband and wife at all. So far as I know there is no legal obstacle to prevent the purchaser from bringing an action in tort against the wife. The real question is whether or not the wife has any legal or equitable interest in the premises which runs with the premises so as to bind them in the hands of a purchaser. I have never heard of, and no authority has been cited to me which suggests that there is, any estate or interest in land of this character. . . . The position is that the purchaser has proved her title to the land. The wife has proved no estate or interest, legal or equitable, in the land. She is accordingly a trespasser, and I must order her to deliver up possession to the plaintiff."

This decision is quite clear, and if it were not for certain observations on it in later cases it would be unnecessary to pursue the inquiry on which I have embarked any further. But since these observations have been made, and since they are widely held to have shaken the authority of the decision in *Thompson* v. *Earthy*, they must now be examined.

In *Errington* v. *Errington* [1952] 1 K.B. 290 the conclusions drawn by the Court of Appeal from the rather complicated facts, in summary form sufficient for the present purpose, were that the plaintiff's predecessor in title granted to the defendant and her husband a licence to occupy the house in dispute, and this licence was not capable of being revoked at the time when the proceedings were brought. The defendant's husband had, as it happened, deserted her between the time when this licence was granted and the commencement of these proceedings, but this was a completely irrelevant circumstance, since the husband had been not the grantor (as in *Thompson* v. *Earthy*) but a co-grantee of the licence. The licence had been granted subject to certain conditions, and the Court of Appeal (Somervell, Denning and Hodson, L.JJ.) held, in an action for possession, that the plaintiff was not entitled to possession so long as the defendant fulfilled the conditions of the licence, and based this decision on the ground that the defendant and her husband were licensees on the terms of a contract entitling them to occupation so long as the payments which were the condition of the licence continued to be made. It will thus be seen that the question which arose in *Thompson* v. *Earthy*—whether a wife has some peculiar right in relation to the matrimonial home which is conferred upon her, not by the terms of a licence expressly agreed between herself and her husband, but as an attribute of her status as a wife—were wholly absent in this case, which turned entirely on the effect to be given to the terms of an express licence.

In his judgment, however, Denning, L.J., referred to *Thompson* v. *Earthy*. It is not clear why, for as has been seen the two cases are very far apart; but the learned lord justice, nevertheless, made the following comments on that case ([1952] 1 K.B., at p. 299): "I notice, however, that in coming to this decision Roxburgh, J., emphasised that the wife was not a licensee, basing himself on something I said in *Old Gate Estates* v. *Alexander*, but the later decision of this court in *Foster* v. *Robinson* shows that she was a licensee and that the husband could not have ejected her in breach of his promise. I cannot help thinking that, if that case had been cited to the learned judge, the decision might have been different."

It is thus necessary to have a look at *Foster* v. *Robinson* [1951] 1 K.B. 149. In that case the plaintiff had let a cottage, which was within the rent restriction legislation, to *X*, who occupied it as the plaintiff's tenant for many years. In 1946 *X* became too old to work, and the plaintiff thereupon arranged to allow him to remain on in the cottage without paying rent until his death. *X* died in 1950 and the defendant, who was his daughter and had lived with him for many years in the cottage, took out letters of administration to *X*'s estate. In an action by the plaintiff against her for possession, the defendant contended that, while the plaintiff had not demanded rent since 1946, her father's contractual tenancy was still in existence at the time of his death and had vested in her as administratrix. The plaintiff contended that *X*'s contractual tenancy had been surrendered by him in 1946. The case was elaborately argued, but the main point taken on behalf of the

defendant was that the transaction which took place between the plaintiff and *X* was aimed at "contracting out of the Rent Acts," and that it was, for this reason, ineffective. If that had been the right view to take of this transaction the surrender on which the plaintiff relied could not have been supported, and judgment would have been given for the defendant. In fact, however, the Court of Appeal (Sir Raymond Evershed, M.R., Cohen and Singleton, L.JJ.) took the other view: they held that a surrender of a contractual tenancy of premises within the scope of the Rent Acts was governed by precisely the same principles as governed the surrender of tenancies at common law, and the only question which then remained for decision was the factual one, whether there had been a surrender in 1946.

On this question Cohen and Singleton, L.JJ., simply refused to disturb the finding of the county court judge, who had held that after the transaction in 1946 *X*, who had up till then been the tenant, had become the licensee of the plaintiff. From this finding the learned lords justices drew the inference that there had in fact been a surrender of the previously existing tenancy in 1946. The Master of the Rolls, however, went a little bit further. He said ([1951] 1 K.B., at pp. 155-56): "First of all it is said that in May, 1946, the existing tenancy ceased. Then comes the second question: What took its place? The answer is: the arrangement that the landlord would charge him no more rent and that he would live in the cottage for the rest of his days rent free. My own conclusion from that statement of the facts is that the old tenancy was extinguished by the creation in its place of a licence for the tenant to occupy the cottage without any payment of rent for the rest of his days." This would have been enough to dispose of the question before the court, but the learned Master of the Rolls went on to say (p. 156): "Since the recent decision in *Winter Garden Theatre (London), Ltd.* v. *Millennium Productions, Ltd.* [1948] A.C. 173, I think that, although a licence of that kind may, apart from the terms of the contract, be revoked, it may now be taken that, if the landlord, having made that arrangement, sought to revoke it, he would be restrained by the court from doing so. Thus the result is arrived at that the tenant was entitled as licensee to occupy the premises without charge for the rest of his days, and he did so."

Now the last thing that I want to suggest is that any doubt can be cast on the substance of these observations: if one may say so with respect, they are fully justified by the facts and by the authority cited in support of the conclusion to be drawn from the facts. But all that it was necessary to decide in this case was that the tenancy came to an end in 1946, which the county court judge had done by his conclusion that after that time *X* was a licensee of the plaintiff. The precise terms of the licence were not in issue, and the passage last cited from the Master of the Rolls' judgment is thus clearly *obiter*. Yet it must have been this passage, or something like it, which Denning, L.J., had in mind when he said, in *Errington* v. *Errington*, that "if that case [*Foster* v. *Robinson*] had been cited [to Roxburgh, J., in *Thompson* v. *Earthy*], the decision might have been different." The facts in *Errington* v. *Errington* have been examined and show, I think, that any analysis of *Thompson* v. *Earthy* must be *obiter* to the decision in that case. The only effect of *Errington* v. *Errington* on *Thompson* v. *Earthy*, therefore, seems to me to be this: it contains an *obiter* reference to a passage in another case which was itself *obiter*—an effect which, I think, *Thompson* v. *Earthy* can support without serious damage to its foundations.

An examination of the remaining case on this subject will have to wait until the next article. "A B C"

Landlord and Tenant Notebook

ESTOPPEL AGAINST NEW REVERSIONER

SOME organs of the popular press, discharging their function of alternately stimulating and satisfying their readers' taste for mystery, recently devoted a good deal of their space, and of their roving reporters' energy, to the question of the true identity of an allegedly elusive South London landlord. I believe that enquiries are still being pursued; but how a solution would benefit tenants, at all events those who have been paying rent to collectors authorised by the subject thereof, is another matter.

How far and in what circumstances payment of rent will estop a tenant from querying the payee's title to the reversion was last gone into in *Hindle and Another* v. *Hick Bros. Manufacturing Co., Ltd.* [1947] 2 All E.R. 825 (C.A.); but the position obtaining may be said to have been established, to all intents and purposes, by *Carlton* v. *Bowcock* (1884), 51 L.T. 659, in which all the older authorities were carefully scrutinised and applied by Cave, J.

The facts of *Carlton* v. *Bowcock* were that the grantor of a lease for a term of five years from Ladyday 1869, at a rent of £75 a year payable quarterly, died in Scotland early in 1872. The plaintiff in the action was executor of the will and devisee. Agents who had collected rent from the tenant, the defendant in the action, before the grantor's death went on collecting it for some time, and as agents, though they manifested a certain amount of vacillation or imagination when it came to describing their principal on the receipts; the rent payable at Lady Day 1872 was said to have been received by them on behalf of the deceased's executors, as was that payable at Michaelmas of that year (the report does not say anything about any Midsummer payment); that at Lady Day 1873 was acknowledged on behalf of the deceased's representatives; the Christmas 1873 and Midsummer 1874 rents (the defendant remaining in occupation) on behalf of his trustees! All this time, however, they had accounted to the plaintiff, and the defendant had made no enquiry or query; but early in 1874, a question arose whether the will was effective to pass English estate; the agents ceased to account to the plaintiff, but their authority was not withdrawn. Nothing seems to have been done to settle the point and when the action was brought it was for six years' arrears of rent due from the defendant as a yearly tenant by virtue of his having held over.

Cave, J., decided the question without reference to whether the bequest was valid; arguments that the defendant had not attorned or, if he had, that he had done so under a mistake, he considered not to be in point. The defendant had paid rent to the plaintiff for two years, and, while the plaintiff was not the landlord who had let him into possession, all this meant was that the defendant, to meet the claim, would have to show (i) that a third person was in fact the assignee of the reversion, and (ii) that he (the defendant) had paid rent (*a*) by mistake, or (*b*) in ignorance. A defendant in such a position was not allowed "to pick holes in the title of the person to whom he had paid rent." The effect of the

authorities, it was held or observed, was that to succeed, the defendant must show a better title in someone else, and such a title as would entitle that third person to a verdict in ejectment.

Mention should next be made of the decision in *Batten-Poole* v. *Kennedy* [1907] 1 Ch. 256; for, though the circumstances were exceptional, a passage in the judgment was relied upon in argument in *Hindle* v. *Hick Bros. Manufacturing Co., Ltd.* The claim was for "rent" due under an alleged "lease" to make an underground road for mining purposes and the decision turned largely on the scope of a reservation and exception of minerals in a conveyance made in 1768, it being held that the language was such as to give the defendants, who were successors in title to the persons who had conveyed the surface, a right to make and use the road. But the plaintiff was able to show that the defendants had for some time been paying a rent of £100 a year, and then to prove that in 1822 a 500-year lease by his alleged predecessors had granted *certain persons* (named) who were then working the mines, rights *inter alia* to make roads, and thus invited the court to say that the defendants must be deemed to be exercising rights under that lease. The defendants admitted in their pleading that they, or some of them or their predecessors in title, had in fact since the year 1877 paid to the plaintiff, but *not to any of the predecessors in title* of the plaintiff, the yearly sum of £100 down to 25th March, 1903, *as if in respect of* the possession or occupation of the said lands *or some of them* under the said indenture of 10th July, 1822. "Such payments, however, were made under a mistake as to the facts and under the belief (contrary to the facts) that the exercise of such rights as the defendants were exercising in or under the lands aforesaid were referable to the said indenture of 10th July, 1822."

And this bold plea succeeded, Warrington, J., deciding the point, however, on a somewhat narrow ground: the 1822 "lease" did not grant more than a personal privilege, as rent, in the proper sense, could not issue out of incorporeal hereditaments; consequently, the payment had been nothing more than a voluntary payment under a supposed legal obligation; there was no authority to support the proposition that a voluntary payment made under a supposed legal liability created in law any obligation at all. The learned judge concluded his observations with ". . . and I know of no rule of law which would prevent me from giving effect to what I find to be the true rights of the parties under any supposed notion of estoppel, a doctrine to which it is not too much to say the court will not resort except in the last extremity."

It was these words which provided the defendants in *Hindle* v. *Hick Bros. Manufacturing Co., Ltd.* with one of their arguments. The facts of the case were that the defendants in question had paid rent quarterly to estate agents on behalf of "the landlords, whoever they might be" from 1933 to 1944. Their tenancy was, as far as could be ascertained, a quarterly one. In April, 1944, the reversion was assigned to the plaintiffs by assignors who purported to convey as trustees for sale. In July, 1944, the estate agents served the defendants with a notice to quit, at the same time expressing their regret and their hope that they would succeed in getting the notice "withdrawn." The defendants then paid further rent down to 1st January, 1945, and after further notices to quit had been served the plaintiffs issued their plaint claiming possession on 2nd December, 1946. The defence was that the plaintiffs were not assignees of the reversion and had no title to the premises.

The criticism levelled at *Carlton* v. *Bowcock* was that Cave, J., had said more than was necessary for the purposes of his decision when he deduced, from the older authorities, the proposition that the existence (if not the identity) of a third person with a better title than the plaintiff's must be shown; for, in the case before him, the defendant had not proved the existence of the person in whom any title was vested. But this, it was held, did not impair the validity of Cave, J.'s general statement of the law, which the court approved and applied.

The invocation of Warrington, J.'s words in *Batten-Poole* v. *Kennedy*, ". . . estoppel, a doctrine to which it is not too much to say the court will not resort except in the last extremity," was ineffective, Bucknill, L.J., observing that "as against that" *Carlton* v. *Bowcock* had stood for sixty years, etc. It would not, one may say, matter much to the plaintiffs whether the resorting was in the last extremity or not; but I would suggest that if the decisions of which the *High Trees* case is the leading case (*Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130) had been available at the date of *Batten-Poole* v. *Kennedy*, or had been examined, in so far as available, in *Hindle* v. *Hick Bros. Manufacturing Co., Ltd.*, possibly something more scathing would have been said than a mere "as against that." For nowadays we have to deal with "equitable estoppel," not merely with estoppel as a rule of evidence; and the defendants might have been called upon to show that it would be fraudulent for the plaintiff to set up his legal rights.

R. B.

HERE AND THERE

PRESTIGE JOB

WERE I to decide to cut free from routine and take to housebreaking (which, after all, is among the few callings in which one can earn tax-free profits) I should certainly start with a call at the house of the Lord Chief Justice or perhaps the Lord Chancellor. There would be no malice in the choice; rather, indeed, it would symbolise an exalted respect, a sentiment of artistic fulfilment in crossing the Rubicon at its deepest and broadest point. If I were to burn the boats of life-long legality I would set them ablaze with a ceremonial torch, not fumble with a box of matches. Half the present industrial unrest we see springs from the fact that people find neither fun nor the satisfaction of artistry in their work, and if the housebreaker isn't going to rediscover them in his job he might almost as well (apart from the advantages of a tax-free income) be a solicitor. I trust, therefore, that the recent intrusion in Lord Goddard's house in Chelsea Square was accomplished in this spirit. The intruder abstracted nothing, offered violence to no one and was sucked back into the obscurity whence for a brief moment he had emerged, having, like the French under Napoleon, accomplished nothing but an epic. The melodramatic element in the Press would evidently have liked to think that here was an avenging emissary from what used to be called the criminal classes but what now, I suppose, we ought to call the socially maladjusted; that, foiled in his design by the week-end absence of the master of the house, he retired frustrated, not apparently appreciating what chagrin he could still have caused by laying about him among the treasures of vintage port stocked in the cellar of a connoisseur like the Chief. At the opposite extreme of blameless conventionality, those unable to credit that any malefactor in his senses would dare lay finger on a window-sill of so augustly inhabited a dwelling suggest that, the moment the intruder realised into what Olympian thundercloud

he had strayed, he fled precipitately as if a thousand furious cats were at his back. I notice that one newspaper, with thoughtful consideration for any of its readers who might wish to repeat the exploit, published a photograph of the back of Lord Goddard's house with a dotted line from roadway to second-floor window. From the fact of his having made so circuitous an entry it almost seems as if the stranger knew less about his own profession than the Lord Chief Justice has picked up in the course of his judicial investigations, if we are to credit a current story that once when a couple, who had borrowed a neighbouring house, found themselves locked out, his lordship, who happened to be passing, very deftly manipulated the catch with a piece of celluloid which he produced from his pocket. It was with no little astonishment that they afterwards learnt his identity. If the tale be true, it has always struck me as singularly fortunate that they really were persons entitled to enter the house.

IT HAPPENED BEFORE

IT is not so rare as one might, in one's more respectful moods, imagine for the sages of the law to be victimised by persons less truly wise, indeed, but with wits sharpened to a razor edge for their own particular limited purposes. Did not Lord Simonds discover a little while ago that a temporary chauffeur in his employment had been using his name and his notepaper to obtain sums of money in circumstances which led straight from the driving-seat to the dock? And then there was that little affair of the Law Courts usher who helped himself to money left in the private room of Mr. Justice Danckwerts. On a grander scale and, one feels certain, for the sheer virtuosity of the thing, there were accomplished the historic thefts of the Lord Chancellor's mace and of the Great Seal. During the night of 7th February, 1677, one Thomas Sadler, a thief very distinguished in his profession, broke into the house of the Earl of Nottingham (Lord Finch, as he then was) in Queen Street and got clear away with the mace. The Great Seal, being under its keeper's pillow, escaped detection. Sadler, one is sorry to know, was convicted and hanged. If he took the mace for a joke, it was felt that he had carried the joke too far. Just over a century later, in the early morning of 24th March, 1784, the Great Seal really did vanish from Lord Chancellor Thurlow's house in Great Ormond Street. Two sets of footprints were found near a window, of which the bars had been forced, but investigation was baffled and neither thieves nor Seal were ever traced. A hastily designed substitute was ready by noon the following day, but it was not until 15th April, 1785, that it was replaced by another equal in craftsmanship to its predecessor. Somewhere, perhaps at the back of an old junk shop, the lost Great Seal may yet be rediscovered by someone who would know it if he saw it.

EXCHANGE

IN the Appellate Committee of the House of Lords recently. *Lord Normand:* Perhaps by reason of the questions addressed to you, you have been forced to approach this question from the barrel end of the gun rather than the stock. *Queen's Counsel:* I've so often looked down judicial barrels that I feel quite comfortable.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Maintenance: Wife's Earning Capacity

Sir,—The case of *Klucinski* v. *Klucinski*, reported in *Weekly Law Reports*, 1953, p. 522 [*ante*, p. 192], decided that in assessing the amount of maintenance which a husband should be ordered to pay under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, magistrates should take into account not only what are the husband's actual earnings, but his earning capacity, and further that his capacity includes the amount he is capable of earning from overtime.

The note might perhaps be amplified, because I think it is clear from the following words of the President that the case is additional authority for the view that a wife's earning capacity must also be taken into account, although, of course, her domestic circumstances are relevant in deciding what her earning capacity is.

The President said: "Apart altogether from the question how much, if any, of this weekly figure represents what I am calling earning capacity, there is also the question of the wife's earning capacity, always assuming (which I must not be taken to be assuming against her) that it is right in the circumstances of this case, particularly with a new infant child, that she should, so to speak, be forced to go out to work."

I write to call attention to this point because there are still a number of magistrates' benches which do not realise that they must take a wife's earning capacity fully into account.

London, S.W.1. ROBERT S. W. POLLARD.

"On the Wrong Lines"

Sir,—With reference to the report in your issue of the 21st March, I very much regret the inconvenience caused to the clerk at Euston on the 10th March when he called for a special parcel. Suitable notice has been taken of the matter to prevent a recurrence.

GEORGE DOW,
Public Relations and Publicity Officer,
London Midland Region, British Railways.

London, N.W.1.

SOCIETIES

At a meeting of the London and Home Counties Branch of the LOCAL GOVERNMENT LEGAL SOCIETY, held at The Law Society, 60 Carey Street, W.C.2, on 27th March, 1953, Mr. B. H. Bliss, Barrister-at-Law, a Legal Adviser to the British Electricity Authority, gave a talk on the Public Utilities Street Works Act, 1950, in which he traced the history of legislation and case law relating to statutory undertakers' apparatus in highways and explained the manner in which the Act provided uniform codes applicable to all such apparatus. At the conclusion of his address, Mr. Bliss enlarged upon points raised by members on the practical application of various provisions of the Act. All communications relating to the Branch should be addressed to the Hon. Secretary, Mr. F. Fixon Ward, Town Hall, West Ham, E.15.

At the 77th annual meeting of the SHEFFIELD DISTRICT INCORPORATED LAW SOCIETY, held on 25th March, the following officers were elected: Mr. Arnold Brittain, solicitor, of Sheffield, President in succession to Mr. Cyril Styring; Mr. J. I. Keer, Vice-President; Mr. V. H. Sandford, Hon. Treasurer; Mr. P. S. Newton, Hon. Secretary.

At the annual general meeting of the HASTINGS AND DISTRICT LAW SOCIETY, held at the Royal Victoria Hotel, St. Leonards-on-Sea, on 27th February, the following officers were elected for the current year: President, Miss Dorothy M. W. Morgan; Vice-President, Mr. St. J. G. A. Sechiari; Hon. Treasurer, Mr. A. W. K. Brackett; Hon. Librarian, Mr. E. Willings; Hon. Secretary, Mr. M. C. S. Langdon. The meeting was preceded by a luncheon, which was attended by more than forty members of the Society. The Society now has a membership of seventy-one.

THE UNION SOCIETY OF LONDON (meetings in the Common Room, Gray's Inn, at 8.0 p.m.) announces the following subjects for debate in April, 1953. Thursday, 16th April: Joint debate with the Cambridge Union Society. "That this House has no faith in Representative Government." The guest speakers from the Cambridge Union Society will be Mr. H. S. Thomas, Queens' College (Vice-President, Cambridge Union Society), and Mr. M. L. Hydleman, Downing College. Wednesday, 22nd April: "That Beauty is more important than Character." Wednesday, 29th April: "That Trade Unions have too much power."

TALKING "SHOP"

WEDNESDAY, 1ST *April*, 1953

Some twenty-seven years have now elapsed since Lord Birkenhead's legislation first became effective on 1st January, 1926, and it would be surprising indeed if it had not developed a few minor flaws over that period. The real trouble is rather that it has stood up all too well to the buffets of time. There was, of course, that rather hasty afterthought—the Law of Property (Amendment) Act, 1926—and lately there has been a rehash of ss. 46 to 49 of the Administration of Estates Act, 1925, by the Intestates' Estates Act, 1952. But by and large the whole mammoth structure still stands. I think that it would be easier to obtain, as it were, a building licence for improvements, if it were possible to contend that the flaws were fissures, but Sir Benjamin Cherry did his work rather too well for that.

The prospects of legislative reform are evidently dim, for other and more urgent and social problems press upon us. What of the Rent Acts—that "welter of chaotic verbiage"—and the pressing need to rescue falling houses? And tidying up the charity mess? And toy coshes and flogging and liability for tortfeasing animals? And yet again there is all that legislation, so carefully wound and set ticking, which must now be dismantled and reassembled and set ticking again. The Town and Country Planning Act, for example. But if ever the time comes when it is possible for our legislators to turn to the Birkenhead legislation again, I hope that an Act may be passed intituled the Conveyancers Relief Act. Another twenty-seven years would bring us—well, nearly—to the centenary of the Conveyancing Act, 1881; so let me suggest the Conveyancers Relief Act, 1981.

THURSDAY, 2ND

When it comes to drafting the Conveyancers Relief Act, 1981, I hope that some attention may be paid to s. 164, Law of Property Act, 1925. Amongst the esoteric mysteries that have yet to be penetrated are the following: why it should be permissible to direct accumulation for the life of the grantor or settlor but not for the life of any other person; why for the minority of the persons specified in paras. (*c*) and (*d*) of s. 164 (1) but not for the minority of any other person; and why it should not be permissible to direct accumulation *simpliciter* for (say) twenty-one years from a given date.

If there is any principle involved (except the obvious aim to curb the exuberance of clients) the exceptions in subs. (2) do not help much towards an understanding of it. Thus, accumulation may be directed to pay debts (incidentally not only those of the grantor, settlor or testator but of any other person) and to raise portions, and another exception is "the accumulation of the produce of timber or wood." No doubt there is a common denominator somewhere, but it all seems sadly reminiscent of the late Mr. Thellusson, whose will, disputed in *Thellusson* v. *Woodford* (1799), 4 Ves. 227, and (1805), 11 Ves. 112 (and, by the way, held valid), gave rise to the Accumulations Act, 1800.

When this subject of accumulation comes up for review I hope also that the opportunity may be taken to exorcise the doubt which now exists—though not, in my view, with much to support it*—as to whether or not the section invalidates *powers* of accumulation as distinct from mandatory directions. The origin of this doubt is obscure; one possible source is the footnote in Wolstenholme and Cherry's Conveyancing Statutes, 12th ed., vol. I, p. 522, where certain cases are cited in support of the proposition that "if accumulation, whether actually intended or not, would, but for the section, be the *inevitable* result of the disposition, then the section applies" (my italics). Another is *Bridgnorth Corporation* v. *Collins* (1847), 15 Sim. 538, which a firm of accountants quoted to me recently as the very last word on the subject, but on examination I find that if that case supports anything in 1953 it is the conclusion that "second cousins are persons who have the same great-grandfather or great-grandmother and do not include first cousins once removed"; and it is so cited in Theobald on Wills, 9th ed., p. 281.

I rate the nuisance value of s. 164 pretty high because, as anybody knows who has attempted the thankless task of drafting an *inter vivos* settlement, it often happens that there is no convenient minority during which accumulation may be directed and so one is driven back again and again (with possibly disastrous results in the estate duty field) to the clumsy device of selecting the settlor's life or some shorter specified period.

In passing I may remark that s. 164 has by accident become a sort of outpost of the Revenue empire and effectively blocks many devices which might otherwise save estate duty, but I doubt if we have any right to complain of that. My real objection to s. 164 is that it does not seem to enshrine any readily comprehensible principle of public policy, its logic seems on a superficial view to be shaky and its effect is more hampering to the draftsman than any considerations of finance or public policy would seem to require. So, without reviving the shade of Thellusson, it is to be hoped that one day a Royal Commission will give the whole thing a wash and brush-up.

WEEK-END REFLECTIONS

It is perhaps a pity that Lord Nathan's Committee found it necessary to report at such length upon charitable trusts (Cmd. 8710); the report covers 179 pages (727 paragraphs) and then there are some thirty pages of appendices until we get on to the Minority Report (nineteen pages and some more appendices). Solicitors who find the law and practice relating to charitable trusts of absorbing interest have no doubt long since read the report. Others, I daresay, have by now either put it on the shelf that they reserve for such things or are keeping it handy to read one day, a process which is apt to merge imperceptibly into the other. With apologies to readers who have read the full report, I make the following brief selection from the many interesting passages that it contains:—

Philosophy and General

"This sense of mutual obligation within the group . . . is unfortunately commonly accompanied by indifference to the needs of those outside the group. Indeed, in one respect, the growth of civilisation may be judged by the extent to which the obligations of philanthropy have spread to include those whose fate was previously a matter of indifference—the slave, the poor, the barbarian, the enemy." (Paragraph 33.)

"Fortunately the hearts of men have always rebelled sooner or later against the harsher dictates of their heads . . ." (Paragraph 42.)

"A too healthy bank balance may impede pioneering voluntary action as effectively as an adverse one . . ." (Paragraph 57.)

Registration of Charities

"Then in the same year was passed the Charitable Donations Registration Act—a brave attempt to get trusts registered and so prevent their disappearance or the loss of their funds. But it seems to have gone unheeded though it is still on the Statute Book." (Paragraph 79.)

The year was 1812. It would be interesting to know how many solicitors have attempted to register a charitable trust under this Act (52 Geo. 3, c. 102).

Living Dangerously

From para. 59 we learn that the Committee "heartily concurs with the views expressed by the Secretary of the

* The decision of Danckwerts, J., in *In re Robb*, p. 263, *post*, appears to confirm our contributor's opinion, but had not been reported at the time of writing.—ED.

Carnegie United Kingdom Trust" who, in giving evidence before them, said: "I think it is the business of trusts to live dangerously." But readers who desire to share this kind of exhilaration with the Carnegie Trustees are kept in suspense until para. 558 where they may learn that the Trustees are permitted to do anything for the "well-being of the masses of the people that is both charitable and selected by themselves as appropriate to the purpose."

Definitions

(*a*) *Nothing new in this:*

Concerning the demand for a new statutory definition of charity, the Committee say that broadly speaking the witnesses who were lawyers were against and those not lawyers "began by" being in favour of a new definition (para. 126). And on the one hand the Committee were urged to devise language which would be "flexible" and would accord with modern social and economic conditions and on the other to introduce a greater element of precision and certainty. In not a few cases the same witnesses urged both points simultaneously, without apparently realising that they are largely incompatible (para. 127). Finally the laity changed their views (para. 132).

(*b*) *But there is in this:*

On the familiar point established in *Gilmour* v. *Coats* [1949] A.C. 426—that the objects of a contemplative community are not legally charitable—the Committee quotes a new suggested definition of that segment of charity usually described as "advancement of religion." According to the suggestion of certain witnesses there should be a re-definition in such terms as to include the contemplative Orders; in their view advancement of religion should be redefined to include "the advancement of religion by those means which that religion believes and teaches are means by which it does advance it." The Committee happily explain what this means—see para. 129.

Administration

On the administrative side we are told in para. 185 that any board of trustees known to the Charity Commissioners to be in default with submission of accounts is reminded within four or five years of the default. It is re-assuring to learn—or is it?—that the Commissioners "are working up to a three or four year cycle."

Who said that?

"While the founder's intentions may have been in the first instance or may become in course of time unwise, there is no reason to suppose that alternative objects which suggest themselves to the mind of the politician or bureaucrat of the day will be any less so." The witness is Lord Beveridge (para. 316).

"ESCROW."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CANADA (ALBERTA): COAL: ROYALTIES: VALIDITY

A.-G. for Alberta *v.* West Canadian Collieries, Ltd., and Others

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone. 24th March, 1953

In 1930, by three concurrent enactments—of the Province of Alberta, the Dominion of Canada, and the Imperial Parliament—triple statutory force was given to a "transfer agreement" concluded in the preceding year, by which the mineral lands and rights situate in the Province of Alberta and theretofore vested in the Dominion were transferred by the Dominion to the Province (s. 2 of the Alberta Act (S.A., 1930, c. 21)), providing that the Province undertook to carry out according to its terms every contract to purchase or lease any Crown lands, mines and minerals made with the Crown in right of the Dominion before 1930, and "not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise . . ." The Province of Alberta having purported by s. 8 of c. 36 of the Statutes of Alberta of 1948 to fix royalties payable under such leases at 10 cents per ton on coal mined and in the case of grants in fee simple at 15 cents per ton on coal mined, "notwithstanding the terms and provisions of any . . . agreement for sale, or lease . . . where the payment of a royalty has been reserved to the Crown in the right of the Dominion or in the right of the Province . . .", the respondents, who were severally the holders of certain leases and grants of lands and coal in Alberta, leased and granted originally by the Crown in right of the Dominion under the Dominion Lands Acts and regulations and Orders in Council from time to time made pursuant thereto, in respect of which the royalties were roughly only one-half of those specified in s. 8 of the Alberta Act, 1948, claimed declarations (*a*) that s. 8 did not apply to their leases and lands, and (*b*) that s. 8 was *ultra vires*. The trial judge awarded a declaration in terms of para. (*a*), *supra*, and the Appellate Division of the Supreme Court of Alberta, on 8th August, 1951, dismissed an appeal by the Province, but on different grounds. The Province now appealed.

LORD ASQUITH OF BISHOPSTONE, giving the judgment of the Board, said that s. 8 of the Alberta Act, 1948, was in conflict with s. 2 of the Alberta Transfer Agreement Act, 1930, and was wholly *ultra vires* and null and void for all purposes. Section 2 of the Act of 1930, which had the force, *inter alia*, of Imperial legislation, provided that the terms of pre-1930 Dominion leases and grants should be scrupulously honoured by the Province after the transfer of mineral rights to the latter. Section 8 of the Provincial Act of 1948 was a naked assertion that the terms of such instruments could be wholly disregarded. That, and nothing less, was what the word "notwithstanding" in its context necessarily implied. Their lordships were of opinion that s. 8 was wholly *ultra vires* and wholly void: the test in respect of its being wholly void was clearly laid down by Lord Haldane in *Attorney-General for Manitoba* v. *Attorney-General for Canada* [1925] A.C. 561, at p. 568. The appeal should be dismissed, but the order of the trial judge should be varied by substituting declaration (*b*) for declaration (*a*). The appellant must pay the costs of the appeal.

APPEARANCES: *H. J. Wilson*, Q.C. (Canadian Bar), *Gahan*, Q.C., and *W. Y. Archibald* (Canadian Bar) (*Lawrence Jones & Co.*); *H. S. Patterson*, Q.C. (Canadian Bar) and *Lord Hailsham* (*White and Leonard*); *H. J. Wilson*, Q.C. (Canadian Bar) (*Blake & Redden*), and *M. C. Shumiatcher*, Q.C. (Canadian Bar) (*Lawrence Jones and Co.*), appeared respectively for the Attorneys-General for Manitoba and Saskatchewan, interveners in support of the appeal.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 801

CANADA: PETROLEUM: CROWN GRANT: ROYALTIES: PROVINCIAL POWERS

A.-G. for Alberta *v.* Huggard Assets, Ltd.

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker, Lord Asquith of Bishopstone
24th March, 1953

The respondents, Huggard Assets, Ltd., were the successors in title of an interest in petroleum and natural gas derived from Crown lands of which the original grantees had obtained a grant in 1913 from the Crown in right of the Dominion of Canada pursuant to Orders in Council of 1911 and 1913. The grant provided, *inter alia*, "To have and to hold the same unto the grantee in fee simple. Yielding and paying unto us and our successors such royalty upon the said petroleum and natural gas, if any, from time to time prescribed by regulations of our Governor in Council . . ." At the time of the grant none of the regulations then in existence affecting the terms on which the Dominion could dispose of Crown lands, mines and minerals in Alberta prescribed a specific rate of royalty chargeable in respect of petroleum or natural gas derived from those sources. After the Transfer Agreement of 1930, however, pursuant to

which Crown lands, mines and minerals in Alberta were vested in the Crown in right of the Province, the Province by various Orders in Council made between 1941 and 1948 purported to impose a royalty on any petroleum and natural gas derived from lands, etc., vested in the Province by the Agreement of 1930. The respondents thereupon instituted proceedings claiming, *inter alia*, that the Province was not entitled to exact any such royalty. The trial judge (McBride, J.), held that the Province had no right to impose or exact payment of the royalty in question, and his decision was affirmed by the Appellate Division of the Supreme Court of Alberta, which in turn, but on different grounds, was affirmed by the Supreme Court of Canada on 6th February, 1951. The Province now appealed.

LORD ASQUITH OF BISHOPSTONE, giving the judgment of the Board, said that, in the circumstances and having regard to the terms of the grant of 1913, and in particular to the words " from time to time," the reddendum purported to entitle the Crown in right of the Dominion, as grantor, to levy royalties " prescribed " by regulations made after the date of the grant. Next, assuming, without deciding, that the terms of the grant—a grant subject to a " variable royalty " (a royalty which the grantor might vary from time to time at his uncontrolled discretion)—were inconsistent with and in breach of the requirements of tenure in " free and common socage "—that, *inter alia*, the sum paid must be " certain "—which tenure was expressly provided for in the Charter of 1670 under which the Hudson's Bay Company was granted Rupert's Land (out of which Alberta was later carved), those requirements of socage tenure were, however, not still valid when the grant was made in 1913, but had been so modified by competent Dominion legislation, consisting of successive Dominion Lands Acts, regulations and orders passed subsequent to the transfer of Rupert's Land to the Dominion in 1870, as to validate the grant. There was nothing to prevent the Governor in Council in right of the Dominion from making the Orders in Council of 1911 and 1913 under the powers conferred by s. 76 (*k*) of the Dominion Lands Act, 1908, by providing that the present case should be governed with respect to royalties by the rescinded Consolidated Regulations of 1906 (made under the Dominion Lands Acts, 1886 to 1892) which provided, *inter alia*, for the levying of " a royalty at such a rate as may from time to time be specified by Order in Council " on the sale of petroleum. The effect of the Orders in Council of 1911 and 1913, read together, was to authorise the grant of 1913, including the imposition of royalties. The grant of 1913 was accordingly valid in respect of, *inter alia*, variable and prospective royalties reserved to the Crown in right of the Dominion. Those rights having been transferred to the Province of Alberta by virtue of the Transfer Agreements Acts of 1930, the right to levy a " variable royalty " on the lands in question was a " right " which within s. 3 of the Alberta Transfer Act of 1930 by " contract . . . or other arrangements . . . relating to . . . lands, mines, minerals or royalties " was originally reserved to the Crown in right of the Dominion and by ss. 1 and 3 of the Act was in 1930 transferred to the Crown in right of the Province of Alberta which, accordingly, was justified in levying by the various Orders in Council of 1941 to 1948 the royalties in question. Appeal allowed and action dismissed. Each party must pay their costs of the proceedings throughout.

APPEARANCES: *H. J. Wilson*, Q.C. (Canadian Bar), *Gahan*, Q.C., and *W. Y. Archibald* (Canadian Bar) (*Lawrence Jones & Co.*); *Geoffrey Cross*, Q.C., and *Nigel Warren* (*Stafford, Clark & Co.*); *Gahan*, Q.C. (*Lawrence Jones & Co.*), *H. J. Wilson*, Q.C. (Canadian Bar) (*Blake & Redden*), and *M. C. Shumiatcher*, Q.C. (Canadian Bar) (*Lawrence Jones & Co.*) appeared respectively for the Attorneys-General for Canada, Manitoba and Saskatchewan, interveners in support of the appellant.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 768**

COURT OF APPEAL

COMPANY: LIABILITY TO CAPITAL DUTY ON AMALGAMATION: NORTHERN IRELAND COMPANY NOT EXEMPT AS " EXISTING COMPANY "

Nestlé Co., Ltd. *v.* Inland Revenue Commissioners

Evershed, M.R., Jenkins and Hodson, L.JJ.

10th March, 1953

Appeal from Danckwerts, J.

The Nestlé Co., Ltd., incorporated in England under the Companies Act, 1948, in 1951 increased its capital by £3,410,000 for the purpose of acquiring not less than 90 per cent. of the share capital of four companies, two being companies which had been incorporated in England and the other two having been incorporated pursuant to the Companies Act of 1932 of Northern Ireland. The Commissioners of Inland Revenue refused to allow exemption for stamp duty under the provisions of s. 55 (1) (A) of the Finance Act, 1927 (as amended), in respect of the amount of the increased capital referable to the taking over of the shares of the two companies incorporated in Northern Ireland. Danckwerts, J., dismissed the appeal by way of case stated from their decision. On appeal:

EVERSHED, M.R., said that for the purposes of s. 55 of the Finance Act, 1927 [which provides for the remission of capital duty on the reconstruction or amalgamation of companies], the word " company " must be given a restricted and technical meaning. It meant in that section a body corporate of the kind indicated in ss. 112 and 113 of the Stamp Act, 1891, that was to say, a body corporate incorporated under letters patent of Her Majesty or according to the laws general or special of Great Britain, meaning by Great Britain, England, Wales and Scotland. " Company " therefore in s. 55 (1) of the Finance Act, 1927, meant English and Scottish companies only, and did not include a company incorporated in Northern Ireland where, following the Government of Ireland Act, 1920, the power to legislate as regarded both stamp duty and joint stock companies for Northern Ireland was transferred to the Northern Ireland Parliament. The fact that in 1922, pursuant to the Northern Ireland Statutory Rules and Orders, 1922, No. 80, the Stamp Act, 1891, was made *mutatis mutandis* part of the local law of Northern Ireland did not mean that because capital duties in accordance with its provisions had been paid in respect of a Northern Ireland company such a company could be treated as an " existing company " for the purposes of s. 55 of the Finance Act, 1927.

JENKINS and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Frederick Grant*, Q.C., *John Senter* and *Roderick Watson* (*McKenna & Co.*); *Pennycuick*, Q.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 786**

ADMIRALTY: COLLISION: TOWED VESSEL: DEFECTIVE LIGHTS

Thomas Stone Shipping, Ltd. *v.* Admiralty and Others The " Albion "

Somervell, Jenkins and Hodson, L.JJ. 13th March, 1953

Appeal from Willmer, J.

On 18th October, 1949, an uncompleted aircraft-carrier, the " Albion," on tow from the Tyne to Rosyth was in collision at night in heavy weather with a collier, the " Maystone." The " Maystone " sank with the loss of twenty-one hands. The carrier was without power or steering capacity, and was in charge of a skeleton crew. On 28th January, 1952, Willmer, J., gave judgment for the plaintiffs, holding that the " Albion " was alone to blame, and apportioned the liability equally between the second and third defendants, namely, the builders of the carrier and the tug-owners. *Cur. adv. vult.*

HODSON, L.J., who read the judgment of the court, said that there was no evidence of negligence on the part of the collier. The court accepted Willmer, J.'s finding that the carrier's port light was defective, and that that was a contributory cause of the collision. It had been contended that since the carrier was being towed, and the tugs were under command, she must be treated as one unit with them, and therefore under command; but in the circumstances the failure to use " not under command " lights or other form of illumination to warn shipping must be held a further contributory cause of the collision. The court further held that there had been a want of care in putting to sea at all in the conditions of a falling barometer, and that having done so it should have been possible for the tugs to have broadcast warnings to shipping when they found the tow behaving as she did. The court, however, varied Willmer, J.'s apportionment of blame, and held that the builders had remained in control and had never transferred possession to the tug-owners. They had sent the carrier to sea with a defective light and had been responsible for the failure to exhibit " not under command " lights, or to warn shipping. The fault in planning was divided between the builders and the tug-owners. The court accordingly apportioned the blame as to two-thirds against the builders and

as to one-third against the tug-owners. Leave to appeal to the House of Lords was granted.

APPEARANCES: *K. S. Carpmael*, Q.C., and *G. N. W. Boyes* (*Middleton, Lewis & Co.*, for *Middleton & Co.*, Sunderland); *H. I. Nelson*, Q.C., and *Derek H. Hene* (*Bentleys, Stokes & Lowless*, for *William Mark Pybus & Sons*, Newcastle-upon-Tyne); *J. Roland Adams*, Q.C., and *Waldo Porges*, Q.C. (*The Treasury Solicitor*); *J. V. Naisby*, Q.C., *J. B. Hewson* and *Gerald Darling* (*Holman, Fenwick & Willan*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 807

INCOME TAX: LIABILITY TO "SPECIAL CONTRIBUTION" OF FINANCE ACT, 1948: TENANT FARMER PAYING RENT TO WIFE: FARMING PARTNERS PAYING RENT TO ONE PARTNER

A. H. Worth *v.* Inland Revenue Commissioners
Inland Revenue Commissioners *v.* A. H. Worth
Inland Revenue Commissioners *v.* G. A. Worth
Inland Revenue Commissioners *v.* A. Hay

Singleton, Jenkins and Hodson, L.JJ. 17th March, 1953

Appeals from Harman, J. These four appeals were heard together.

In the first case, Mr. Arthur Worth, the appellant, was a tenant farmer farming land at Soham in Cambridgeshire. Some of the land he farmed was owned by his wife, and she was the tenant for life in fee simple of the rest of it. Mr. Worth paid rent to Mrs. Worth in respect of his occupation of the whole of the lands. The rent so paid was disallowed as a deduction in computing Mr. Worth's farming profits, only the amount of the Schedule A assessment being allowed. For the purposes of the special contribution levied under Pt. V of the Finance Act, 1948, the Special Commissioners (and, on appeal, Harman, J.) held that the income from the said lands, as measured for the purpose of the Income Tax Acts by the net Schedule A assessment of £1,136, was investment income arising to the wife, and although for the purpose of computing the husband's total income it had to be included, it did not "arise to him" within the scope of s. 49 (2) (*b*) of the Act of 1948. Therefore, it had to be taken into account in computing his liability for the special contribution. The taxpayer appealed.

The second case concerned certain land in the same neighbourhood owned by Mr. A. H. Worth, but farmed by him in partnership with his son, Mr. G. A. Worth. The father and son as partners paid rent to the father in respect of the land. They had been in partnership for many years, and at the relevant period the profits were shared equally between them, though at an earlier date the son had only had a fifth share. The net Schedule A assessment of the land owned by the father was £1,489 10s., and the Special Commissioners of Inland Revenue held that that sum did not form part of the investment income of the father for the purposes of the special contribution, but that it was exempted by the provision in s. 49 (2) (*b*) of the Act of 1948. On appeal, Harman, J., reversed that finding and the taxpayer appealed.

The third and fourth cases were not fully argued on appeal. In each case the question at issue was whether the net Schedule A assessment based on the rent paid to one of two partners owning land farmed by the partnership firm was to be taken into account in computing the liability to the special contribution.

SINGLETON, L.J. (dealing with the first case), said that for the purposes of the special contribution levied by Pt. V of the Finance Act, 1948, the net Schedule A assessment of the lands owned by the wife was to be included in the assessment based on the aggregate income of the husband and wife as being part of the husband's investment income, just as it would be so treated for purposes of sur-tax. The income was not, in fact, the husband's income, nor did it "arise" to him as a person carrying on business from property occupied and used by him for the purposes of that business, which income, by s. 49 (2) (*b*) of the Act of 1948, was not to be treated as investment income. For the purposes of Pt. V of the Act of 1948, it had to be treated as part of his income by virtue of s. 48, but that did not alter its character. It remained investment income and was not excluded from consideration by s. 49 (2) (*b*).

Dealing with the second case, he said that the Schedule A assessment on the land was not part of the investment income of the father for the purposes of his assessment to the special contribution, for it was income arising to him from property occupied and used by him for the purposes of the trade of farming and carried on by him, within the scope of the exemption in s. 49 (2) (*b*) of the Act of 1948. He referred to *Commissioners of Income Tax for the City of London* v. *Gibbs* [1942] A.C. 402; [1942] 1 All E.R. 415; 24 Tax Cas. 221.

JENKINS and HODSON, L.JJ., agreed.

Appeal in first case dismissed.

Appeal in other cases allowed.

No order as to costs in first two cases. Costs to appellants in other two.

Leave to appeal to House of Lords granted.

APPEARANCES: *L. C. Graham-Dixon*, Q.C., and *F. N. Bucher* (*Smiles & Co.*, for *Mossop and Bowser*, Holbeach); *F. Heyworth Talbot*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 584

CHANCERY DIVISION

WILL: POWER TO ACCUMULATE INCOME IN EXCESS OF STATUTORY PERIOD: INTESTACY AS TO EXCESS INCOME

***In re* Robb, deceased; Marshall *v.* Marshall and Others**

Danckwerts, J. 19th March, 1953

Adjourned summons.

A testator who died in 1916 by his will directed his trustees to pay "out of the annual income" of his residuary estate annuities to his wife and daughter for their lives, and after their deaths directed his trustees to stand possessed of his residue "in trust for all my grandchildren who shall be living at my death or any of them born at any time afterwards and who being male attain the age of twenty-five years before the expiration of twenty-one years from the death of the survivor of my said wife and daughter or being female attain [that age] or marry before the expiration of such twenty-one years if more than one in equal shares . . . I empower my trustees to accumulate the surplus income of my residuary estate at compound interest . . ." The widow died in 1921. There were now living twelve grandchildren, all of whom had attained twenty-five. No surplus income was accumulated for twenty-one years from the testator's death until 1937, and since then had been divided amongst the next of kin. Doubts having arisen whether that was a correct course, a summons was taken out to ascertain whether the surplus income arising after twenty-one years from the testator's death and pending the death of the daughter ought to be held in trust for the next of kin as under a partial intestacy, or to be held in trust to divide it among the grandchildren. The Law of Property Act, 1925, provides by s. 164 (reproducing the provisions of the Thellusson Act): "(1) No person may by any instrument or otherwise dispose of any property in such manner that the income thereof shall . . . be . . . accumulated for any longer period than . . . (*b*) a term of twenty-one years from the death of the . . . testator . . . In every case where any accumulation is directed otherwise . . . the direction shall . . . be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section . . . be received by the person or persons who would have been entitled thereto if such accumulation had not been directed."

DANCKWERTS, J., said that it had been argued that the validity of the provision for accumulation was good, in that it conferred a power and did not impose an imperative trust; that a power to accumulate connoted that accumulation need not necessarily be carried out, and that there was no express direction to accumulate. But a consideration of the language of s. 164 (1) indicated that, while a power to accumulate unlimited in form need not be bad in itself, it could not be lawfully exercised by the trustees for more than twenty-one years after the testator's death. Further, the terms of the will and the decision in *In re Coller's Deed Trusts* [1939] Ch. 277 indicated that the annuitants were entitled to have any deficiency in any one year made up out of other years, which would necessarily involve an accumulation during the lifetime of either of the annuitants unless the annuities were charged on the income of each particular year, which was not the case under the will in question. It followed that there was an implied trust for accumulation which was invalid (*Tench* v. *Cheese* (1855), 6 De G. M. & G. 453; *Mathews* v. *Keble* (1868), L.R. 3 Ch. 691). On the question of the disposal

of the income, the present case could not be distinguished from *Berry* v. *Geen* [1938] A.C. 575; nothing was given to the grandchildren until the death of the last annuitant, so that the income which could not be lawfully accumulated in the meantime was undisposed of and passed to the next of kin. Declaration accordingly.

APPEARANCES: *H. Hillaby; H. A. H. Christie*, Q.C., and *G. B. H. Dillon; B. L. Bathurst*, Q.C., and *D. S. Chetwood; R. Jennings*, Q.C., and *B. S. Tatham* (*Hyde, Mahon & Pascall*, for *Keenlyside & Forster*, Newcastle upon Tyne) (*A. H. Headley*, Leicester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 819

CHARITABLE BEQUEST: MISDESCRIPTION: INSTITUTION: ESTATE DUTY

In re Nesbitt, deceased; Dr. Barnardo's Homes National Incorporated Association *v.* Board of Governors of the United Newcastle-upon-Tyne Hospitals

Roxburgh, J. 20th March, 1953

Adjourned summons.

A testatrix who died in 1949, by her will made in 1946, provided by cl. 3: "My trustee shall out of the moneys to arise from the sale and conversion of my real and personal estate pay my funeral and testamentary expenses, death duties and legacy duty (if any) and my debts and shall stand possessed of the residue (*a*) upon trust to pay thereout the following legacies . . . (2) To the Royal Infirmary of Victoria Street, Newcastle-on-Tyne, the sum of £500 for the general purposes of such institution; (3) to the Victoria Hospital of Newcastle-on-Tyne the sum of £500 for the general purposes of such institution . . .; (9) to the Manx Blind Welfare Society the sum of £100 for the general purposes of such institution [followed by three personal pecuniary legacies] . . .; (13) to the Rev. C. W. Townsend, of the Unity Church, Torquay . . . or his successor at such church for the general purposes of such church the sum of £100; (14) to the Rev. H. Barnes, of the Divine Unity, Ellison Place, for unitarian work, Newcastle, or . . . his successor at such church for the general purposes of such church, the sum of £100 . . .; (*b*) subject to the payment of the foregoing legacies and all legacy duty, if any, my trustee shall pay the residue of the said money in equal shares between the charitable institutions referred to in this my will. . . ." By cl. 4: "I declare that the receipt of the treasurer for the time being of the foregoing charitable institutions shall be a good and sufficient discharge to my trustee for any moneys bequeathed by this my will to any such charitable institutions." By a previous will made in 1943 the testatrix had bequeathed "to the Royal Infirmary, Victoria Road, Newcastle-upon-Tyne, £500, and to the hospital also of Newcastle-upon-Tyne, £500." Before nationalisation there were at Newcastle a Royal Victoria Infirmary in Queen Victoria Road and a Newcastle General Hospital in West Road, both of which had vested in the defendant board. A summons was taken out for the ascertainment of certain questions, including (1) whether the board was entitled to the gifts to the hospitals; (2) whether the gifts to the Rev. C. W. Townsend and the Rev. H. Barnes entitled those beneficiaries to a share of residue as "charitable institutions," and (3) whether or not English estate duty on certain Australian assets had to be borne in proper proportions by the legatees.

ROXBURGH, J., on the first question, said that the first gift contained a misdescription of the Royal Victoria Infirmary, and the word "Victoria" had been transferred to the wrong hospital. It could not be thought that the testatrix meant to give two legacies to one body, or to give a legacy to a non-existent body, and on the mere extrinsic evidence regarding the hospitals a misdescription could be inferred. It was also possible to look at the former will to identify or assist in identifying a misdescribed object (*In re Ofner* [1909] 1 Ch. 60). The language of the former will confirmed the nature of the misdescription; the testatrix had given the name "Victoria" to the wrong hospital. If it was struck out, the General Hospital, as the only other general hospital, was entitled to take; so that the board were entitled to both gifts. On the second point, the gift to the Manx Blind Welfare Society, which would not normally be described as an "institution," showed that the testatrix used the word in an enlarged sense. The churches were plainly charitable, but the gifts (13) and (14) were not to them but to two named persons as trustees for church purposes. However, the churches were "charitable institutions referred to" in the will, and were accordingly entitled to shares of residue; the ministers were not concerned with this gift unless they were the treasurers, or the money was paid to them under a scheme. On the last question, it was agreed that the legatees must bear English estate duty on the Australian assets unless there was a direction in the will to the contrary; such a direction was to be found in cl. 3, as it was impossible to construe "death duties" as including estate duty on English assets and excluding such duty on Australian assets. Declaration accordingly.

APPEARANCES: *Wilfrid Hunt* (*Fournier & Roberts*); *A. L. Stott* (*Hyde, Mahon & Pascall*, for *Clayton & Gibson*, Newcastle-upon-Tyne); *E. I. Goulding* (*Ranger, Burton & Frost*); *S. Newcombe* (*Arthur E. & C. Burton*, for *Samuel Phillips & Co.*, Newcastle-upon-Tyne); *I. Campbell* (*Hyde, Mahon & Pascall*, for *R. W. T. Lubbock*, Newcastle-upon-Tyne); *J. H. Stamp* (*Solicitor of Inland Revenue*); *D. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 595

QUEEN'S BENCH DIVISION

PRACTICE: FATAL ACCIDENTS ACTS: ACTION BROUGHT BY "WIDOW AND ADMINISTRATRIX" BEFORE GRANT OBTAINED

Stebbings *v.* Holst & Co., Ltd.

Donovan, J. 16th March, 1953

Action tried at Leeds Assizes.

The plaintiff, by a writ dated 24th January, 1952, claimed damages in respect of the death of her husband, who died on 15th June, 1951. In the writ the title of the action was "Between W. S. (widow and administratrix of the estate of A. S.), plaintiff, and H., Ltd., defendants," and the indorsement was "The plaintiff's claim is for damages under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1934, as widow and administratrix of the estate of A. S., deceased . . ." The names of the dependants on whose behalf the action was brought were not stated on the indorsement, but were set out in the statement of claim. The plaintiff was not granted letters of administration until 2nd February, 1952. The defendants contended as a preliminary point that the writ was a nullity, which the plaintiff admitted as regards the Law Reform Act. The Fatal Accidents Act, 1846, provides by s. 2 that the action should be brought "by and in the name of the executor or administrator of the person deceased" and must be for the benefit of the wife, husband, parent and child of the deceased. By the Fatal Accidents Act, 1864, s. 1, if there should be no executor or administrator, or if no action had been brought by such within six months, action might be brought by and in the names of such person or persons for whose benefit it would have been brought in the name of the executor or administrator.

DONOVAN, J., said that the plaintiff contended that she had brought the claim "as widow" and was entitled so to bring it, in spite of the absence of a grant of administration. The defendants contended that she had not sued "as widow," and that, if she had, the writ was still a nullity, because the dependants were not named. The proper view of the indorsement was that the words "widow" and "administratrix" were simply describing the plaintiff's personal status, and were not declaring the capacity in which she sued. It was also contended that the indorsement indicated that the plaintiff was suing simply as administratrix; that contention meant that the words "as widow" should be deleted, whereas they were wholly appropriate under the Act of 1864; if any words ought to be disregarded, it was "as administratrix." It was a fair and reasonable interpretation that the claim under the Fatal Accidents Acts was brought "as widow" and that under the Law Reform Act "as administratrix"; alternatively, the words "as administratrix" ought to be treated as an error and disregarded. It was further contended that the writ was a nullity as the dependants were not named in the writ, and Ord. 3, r. 4, required a representative capacity to be stated. But the plaintiff had done so by suing "as widow," and the rule did not require the names of the persons represented to appear on the indorsement; if the rule applied, it has been complied with. Preliminary objection overruled.

APPEARANCES: *E. J. Parris* (*Philip Niman*, Middlesbrough); *G. Veale*, Q.C., and *G. S. Waller* (*Cohen, Jackson & Scott*, Stockton-on-Tees).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 603

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: EVIDENCE OF ACCOMPLICE: FAILURE OF PRISONER TO GIVE EVIDENCE NOT CORROBORATION

R. *v.* Jackson

Lord Goddard, C.J., Byrne and Parker, JJ. 23rd March, 1953

Appeal against conviction.

The appellant was charged on eight counts: on the first with being an accessory before the fact to the theft of motor tyres; on the next three with receiving motor tyres knowing them to have been stolen; and on the last four, which were withdrawn from the jury, with receiving miscellaneous stolen property. On the first four counts the evidence mainly consisted of that of the persons who had been convicted of stealing the goods in question. The appellant did not give evidence. The judge, in his summing up, after warning the jury of the danger of convicting on the uncorroborated evidence of accomplices, and referring to the appellant's failure to give evidence, said "if you say that forms ample corroboration that those thieves were telling the truth, that he refrained from going into the witness-box because he does not dare . . . the weight you attach to his silence is entirely a matter for you." The appellant was convicted on all four counts and was sentenced to four years' imprisonment.

LORD GODDARD, C.J., said that the day had long gone by when the court would quash a conviction merely because it was obtained on the evidence of accomplices; it was always open to the jury, if they chose, to accept such evidence. The judge's words could only have been understood by the jury as meaning that the appellant's failure to give evidence might amount to corroboration, if they thought fit to treat it as such. Such failure to give evidence was a matter which the jury could very properly take into account, but to say that in itself it amounted to corroboration was not a right direction, and was wrong in law. But the case was so overwhelming that the court would apply the proviso to s. 4 (*c*) of the Criminal Appeal Act, 1907, and dismiss the appeal, although the appellant's point of law had succeeded. Appeal dismissed.

APPEARANCES: *J. Bussé*, Q.C., and *J. Ellison* (*Registrar, Court of Criminal Appeal*); *G. G. Baker*, Q.C., and *H. J. Davies* (*Gibson & Weldon*, for *W. C. Scott*, Stoke-on-Trent).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 591

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Accommodation Agencies Bill [H.C.] [31st March.
Harbours, Piers and Ferries (Scotland) Bill [H.C.] [31st March.
Prevention of Crime Bill [H.C.] [31st March.
White Fish and Herring Industries Bill [H.C.] [31st March.

Read Second Time :—

Glasgow Corporation Order Confirmation Bill [H.L.] [31st March.
Iron and Steel Bill [H.C.] [31st March.
Registration Service Bill [H.L.] [1st April.

Read Third Time :—

University of Southampton Bill [H.C.] [31st March.
Manchester Corporation (Advertisements) Bill [H.L.] [1st April.
Rhoanglo Group Bill [H.C.] [1st April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Coastal Flooding (Emergency Provisions) Bill [H.C.] [1st April.
Foundling Hospital Bill [H.L.] [31st March.
Great Ouse River Board (Revival of Powers, &c.) Bill [H.L.] [31st March.
Leasehold Property Act and Long Leases (Scotland) Act Extension Bill [H.L.] [1st April.
London Hydraulic Power Bill [H.L.] [31st March.
National Trust Bill [H.L.] [31st March.
South Essex Water Bill [H.L.] [31st March.

Read Third Time :—

Belper Urban District Council Bill [H.C.] [31st March.
Tees Conservancy Superannuation Scheme Bill [H.C.] [31st March.
Tynemouth Corporation Bill [H.C.] [31st March.

B. DEBATES

On the third reading of the **Accommodation Agencies Bill**, Sir GEOFFREY HUTCHINSON said that the agencies aimed at had in the last twelve months defrauded the public of about £100,000. Twelve months ago there were some forty agencies of that character in the Metropolitan Police District alone. Since then a number had closed their doors.

He contended that the agencies were already unlawful in that they were obtaining money by false pretences, but the difficulties of proof under the present law were formidable. It meant that a great cloud of witnesses had to be collected, and even then there was no certainty of conviction. The Bill would make it much easier for the authorities to exercise their powers.

Seconding the Bill, Lieut.-Col. MARCUS LIPTON said many poor people had been defrauded of fees of from one to five guineas by fraudulent so-called estate agents who were not members of any professional association. They merely collected a few names and addresses from the newspapers and circulated them to the people whom they had been successful in persuading to part with fees. They also advertised in the windows of small shops, particularly in the London suburbs.

The PARLIAMENTARY SECRETARY TO THE MINISTER OF HOUSING AND LOCAL GOVERNMENT congratulated the sponsors of the Bill. The frauds were particularly heartless, cruel and evil, because the victims lost not only money but also the hope of a home. It was quite wrong that fraudulent people should make the scarcity of homes the subject of one of their most vicious rackets.

The Bill was read a third time and passed. [27th March.

STATUTORY INSTRUMENTS

Abington-Lanark-Airdrie-Cumbernauld Trunk Road (Chapelhall Diversion) Order, 1953. (S.I. 1953 No. 513.)
Act of Sederunt (Rules of Court Amendment), 1953. (S.I. 1953 No. 523 (S. 45).) 5d.
Barley (Amendment) Order, 1953. (S.I. 1953 No. 532.)
Bridport Water Order, 1953. (S.I. 1953 No. 540.) 5d.
Camberwell (Councillors and Wards) Order, 1953. (S.I. 1953 No. 531.) 6d.
Cereal Fillers (Revocation) Order, 1953. (S.I. 1953 No. 520.)
Coal Industry Nationalisation (Satisfaction of Compensation) (Amendment) Regulations, 1953. (S.I. 1953 No. 521.)
County of London Justices (Jurisdiction) Order, 1953. (S.I. 1953 No. 496.) 5d.
Cream and Use of Milk (Revocation) Order, 1953. (S.I. 1953 No. 552.)
Dangerous Drugs Regulations, 1953. (S.I. 1953 No. 499.) 1s. 2d.
Dredge Corn (Great Britain and Northern Ireland) (Amendment) Order, 1953. (S.I. 1953 No. 533.)
East Sussex and West Sussex (Alteration of Boundaries) Order, 1953. (S.I. 1953 No. 518.) 8d.
East Worcestershire Water Order, 1953. (S.I. 1953 No. 565.) 5d.
Eggs Order, 1953. (S.I. 1953 No. 529.) 6d.
Feeding Stuffs (Prices) Order, 1953. (S.I. 1953 No. 494.) 1s. 5d.
Feeding Stuffs (Rationing) (Amendment and General Licence) Order, 1953. (S.I. 1953 No. 544.)
Finsbury (Councillors and Wards) Order, 1953. (S.I. 1953 No. 498.) 5d.
Fire Services (Appointments and Promotion) (Scotland) Regulations, 1953. (S.I. 1953 No. 530 (S. 47).) 6d.
Fire Services (Conditions of Service) (Scotland) Regulations, 1953. (S.I. 1953 No. 547 (S. 50).) 5d.

Fire Services (Ranks and Conditions of Service) Regulations, 1953. (S.I. 1953 No. 535.) 5d.

Gott Bay Pier Order, 1953. (S.I. 1953 No. 522 (S. 44).) 6d.

Gretna-Stranraer-Glasgow-Stirling Trunk Road (Creetown Diversion) Order, 1953. (S.I. 1953 No. 500.) 5d.

Heating Appliances (Fireguards) Regulations, 1953. (S.I. 1953 No. 526.) 5d.

Heating Appliances (Fireguards) (Scotland) Regulations, 1953. (S.I. 1953 No. 524 (S. 46).) 5d.

London-Holyhead Trunk Road (Denbigh Corner) Order, 1953. (S.I. 1953 No. 514.)

London Traffic (Prescribed Routes) (No. 11) Regulations, 1953. (S.I. 1953 No. 548.)

Made-up Textiles Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 528.) 6d.

Metropolitan Water Board (Byelaws) Order, 1953. (S.I. 1953 No. 564.)

Milk (Control and Maximum Prices) (Great Britain) (Amendment) Order, 1953. (S.I. 1953 No. 551.)

National Health Service (General Medical and Pharmaceutical Services) Amendment (No. 2) Regulations, 1953. (S.I. 1953 No. 505.) 11d.

National Health Service (Local Health Authorities) Estimation of Expenditure (Amendment) Regulations, 1953. (S.I. 1953 No. 506.)

Oats (Great Britain and Northern Ireland) (Amendment) Order, 1953. (S.I. 1953 No. 534.) 5d.

Old Metal Dealers (No. 3) Order, 1953. (S.I. 1953 No. 497.)

Perth-Aberdeen-Inverness Trunk Road (Lhanbryd and Loch Oire Diversions) Order, 1953. (S.I. 1953 No. 510.)

Rate Accounts (Metropolitan Borough Councils) Regulations, 1953. (S.I. 1953 No. 480.) 5d.

Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 501.) 5d.

Ships' Stores (Amendment) Order, 1953. (S.I. 1953 No. 550.)

Ships' Stores (Charges) (Amendment) Order, 1953. (S.I. 1953 No. 527.)

Stopping Up of Highways (Derbyshire) (No. 2) Order, 1953. (S.I. 1953 No. 511.)

Stopping up of Highways (London) (No. 3) Order, 1953. (S.I. 1953 No. 512.)

Stopping up of Highways (Southend-on-Sea) (No. 1) Order, 1953. (S.I. 1953 No. 509.)

Stopping up of Highways (Worcestershire) (No. 2) Order, 1953. (S.I. 1953 No. 508.)

Draft **Transferred Undertakings** (Compensation to Employees) (Amendment) Regulations, 1953.

Tuberculosis (South-West Scotland Attested Area) Order, 1953. (S.I. 1953 No. 538.)

Tuberculosis (South-West Wales Attested Area) Order, 1953. (S.I. 1953 No. 539.)

Wages Council (Retail Bread and Flour Confectionery Trade, England and Wales) Order, 1953. (S.I. 1953 No. 503.)

Wages Council (Retail Bread and Flour Confectionery Trade, Scotland) Order, 1953. (S.I. 1953 No. 504.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Land Tax Incorrectly Stated in Contract—Liability of Vendor and His Professional Advisers

Q. *A* instructed estate agents to offer a property for sale by private treaty. The particulars prepared by the agents stated that land tax was £1 per annum. After *B* had agreed to purchase the property, subject to formal contract, *A* called to see us, as her solicitors, and said she did not think the land tax was correctly stated, but that her accountants would on request supply us with the proper figure. We wrote to the accountants, who had done *A*'s tax work for many years, and they replied that the land tax was only 16s. 3d. per annum. The contract was prepared by us, and made subject to The Law Society's conditions, and we stated the land tax to be 16s. 3d. per annum. We gave the same reply to a preliminary inquiry from *B*'s solicitors on the same subject. The last receipt for land tax showed that 16s. 3d. per annum had been paid, and this was available for inspection by the purchaser's solicitors when they completed, though we doubt if they in fact inspected it. *B*'s solicitors now inform us that the Inspector of Taxes has confirmed that the land tax was formerly £2 per annum, and is now £1 12s. 6d. per annum. On our asking the accountants for an explanation, they say that the only possibility is that *A* has for very many years been assessed at half-rate, though the demand notes show no evidence of this. *B*'s solicitors are now calling upon *A* to pay half the redemption moneys. Is *A* under any liability to do so, and if so has *A* any claim for reimbursement against the estate agents, and/or the accountants, and/or ourselves, acting as her agents?

A. Although land tax is not an incumbrance and need not therefore be referred to in the contract, it would appear that if it is so referred to the reference would amount to a warranty that the land tax is as stated, and if it is not as stated, the purchaser would be entitled to damages, in this case the equivalent of one-half of the cost of redemption or a like sum by way of compensation under General Condition 31 (2). We are unable to see that *A* has any right to reimbursement from our subscribers, who obtained information from the source pointed out to them by their client. We know of no authority requiring a solicitor acting for a vendor to seek elsewhere than from his client for particulars of any charges to which the land may be subject. Similar remarks seem to us to apply to the estate agents, although it is not quite clear from whom they obtained the figure of £1. So far as concerns the accountants we think they were under a duty to their client to state the figure correctly, and they may have been negligent in not having pointed out to the solicitors that the figure quoted might have been at a reduced rate. If, however, the accountants never knew or had reason to believe that the land tax was at a reduced rate we doubt if the omission to find that out would be negligence in the absence of express instructions from the client so to do.

Life Policy—Assignment as Collateral Security in Mortgage—Right of Assurance Society to Production of Assignment and Reassignment on Discharge of Mortgage

Q. A life policy is by separate deed assigned as collateral security on unregistered land. On the discharge of the mortgage the policy is reassigned and notice of reassignment given to the assurance society. Has the society the right to call for production of the collateral assignment of the policy, together with the reassignment thereof, or must it be content with notice of reassignment? On a claim being made for payment under the policy, has the assurance society the right of permanent retention of the collateral assignment, together with the re-assignment of the policy, and if so can the society be called upon to furnish an undertaking as to production and safe custody? What difference does it make: (i) if the assignment of the policy is in the same deed as that charging the main security; (ii) if the main security is registered land and the discharge thereof is therefore in Form 53 under the Land Registration Acts, which embraces the discharge of the collateral security; (iii) if the mortgagees also gave notice to the society of the discharge of the security?

A. We think it would be unwise to refuse to produce to the society the assignment and reassignment. For instance, the society are concerned to see that the reassignment is duly stamped (Stamp Act, 1891, s. 118). Consequently, if they insist on production, one would not be safe in refusing as they might refuse to make a payment under the policy, and there is a danger that in any consequent legal proceedings costs might be awarded against a party who had refused to produce the documents. We can see no ground on which the society can insist on retaining permanently the assignment and reassignment. In our opinion, if they are forwarded it should be for inspection only: (i) if the above opinions are correct no distinction appears necessary if the assignment is in the same deed as the main security; (ii) similarly, we do not think there need be any difficulty in the case of registered land; (iii) we see no reason for a distinction if the mortgagees also gave notice of discharge.

NOTES AND NEWS

Honours and Appointments

Her Majesty The Queen has been pleased to approve, on the recommendation of the Lord Chancellor, the names of the following gentlemen for appointment to the rank of Queen's Counsel: ELLIOT MARCET GORST, BRUCE EDGAR DUTTON BRIANT, CLAUDE HENRY DUVEEN, M.B.E., JOHN WATT SENTER, FENTON ATKINSON, REGINALD WILLIAM GOFF, JACK MESSOUD ERIC DI VICTOR NAHUM, JOHN PATRICK GRAHAM, JOHN FREDERICK DRABBLE, QUINTIN McGAREL VISCOUNT HAILSHAM, RICHARD HADDOW FORREST, KENNETH ROBERT HOPE JOHNSTON, EUSTACE WENTWORTH ROSKILL, JOHN MEGAW, RUDOLPH LYONS, INGRAM JOSEPH LINDNER, FREDERICK ELWYN JONES.

The Queen has approved the appointment of Mr. H. S. KENT, a Parliamentary Counsel to the Treasury, to be Procurator-General after the retirement of Sir Thomas Barnes on 25th April. The Lords Commissioners of the Treasury propose to appoint Mr. Kent to be Treasury Solicitor.

Mr. B. ST. J. P. CHARLES, Registrar of the Swansea and Neath and Port Talbot County Courts and District Registrar of the Swansea District Registry, has been appointed, in addition, Registrar of the Ammanford and Llanelly County Courts as from 1st April.

Mr. J. C. PARRY DE WINTON, Registrar of the Brecknock, Builth and Hay County Courts and District Registrar of the Builth District Registry, has been appointed, in addition, Registrar of the Llandovery County Court as from 1st April.

Mr. G. T. KELWAY, Registrar of the Haverfordwest, Pembroke Dock and Narberth and Cardigan County Courts, and District Registrar of the Haverfordwest District Registry, has been appointed, in addition, Registrar of the Carmarthen County Court and District Registrar of the Carmarthen District Registry as from 1st April.

Mr. E. F. G. RHODES, A.F.C., Registrar of the Portsmouth and Southampton County Courts and District Registrar in the District Registry of the High Court of Justice in Portsmouth, has been appointed, in addition, Registrar of the Lymington and Petersfield County Court as from 1st April. The appointment to Petersfield is in consequence of the resignation of Mr. A. G. Lunt, and the appointment to Lymington is owing to the detachment of that court from the Bournemouth group of courts under the Registrarship of Mr. C. Chieveley Williams, O.B.E.

Mr. E. M. GIBSON, solicitor, of Sutton, Surrey, has been appointed Chairman of the Sutton District Water Company.

The following appointments are announced in the Colonial Legal Service: Mr. J. C. HOOTON, Crown Counsel, Gold Coast, to be Senior Assistant Legal Secretary, East Africa High Commission; Mr. R. M. M. KING, Crown Counsel, Somaliland Protectorate, to be Solicitor-General, Nyasaland; Mr. M. J. C. SAUNDERS, Assistant Commissioner of Lands, Gold Coast, to be Resident Magistrate, Gold Coast; Mr. R. O. SINCLAIR, Puisne Judge, Tanganyika, to be Chief Justice, Nyasaland; Mr. G. D. M. COLLETT to be Crown Counsel, Nyasaland; Mr. E. LIGHT to be Magistrate, Fiji; Mr. M. NUNAN to be Crown Counsel, Nigeria; and Mr. W. H. C. CLEVELAND-STEVENS to be Deputy Registrar of the High Court, Northern Rhodesia.

Personal Notes

The staff of Messrs. Blandy and Blandy, solicitors, of Reading, have won the Reading "National Savings" competition for the greatest increase in savings over the past six months. They showed an increase of 374 per cent.

Mr. O. S. F. Goodman, solicitor, of Plymouth, and a member of the City Council, was married on 28th March to Miss H. M. Stick, of Wadebridge.

Mr. P. F. G. Johnstone, solicitor, of Nottingham, was married on 28th March to Miss J. H. G. Shields, of Breedon-on-the-Hill.

Mr. A. Pilcher has just completed sixty years with Messrs. Tassell and Son, solicitors, of Faversham, Kent. During this time he has served with four generations of the Tassell family.

At the annual dinner of the Lambeth Chamber of Commerce, Mr. J. C. Turner, solicitor, of Cannon Street, London, was presented with a table cigarette lighter. Mr. Turner has been secretary to the chamber since it began some ten years ago.

Commander W. K. Wood is resigning from the position of Deputy Clerk of Wiltshire County Council and Deputy Clerk of the Peace to enter private practice. He was appointed to the post in October, 1948, having previously been senior assistant solicitor to Gloucestershire County Council.

Miscellaneous

The 71st Annual Conference of The Incorporated Association of Rating and Valuation Officers is to be held at the Central Hall, Westminster, on Friday and Saturday, 2nd and 3rd October, 1953. Addresses will be given by the President of the Association (Mr. Arthur Lockwood, M.B.E., F.R.I.C.S., F.R.V.A., F.A.I.) and Sir William Fitzgerald, M.C., Q.C. (President of the Lands Tribunal).

Papers will be presented by: Mr. T. S. Dulake, F.R.I.C.S. (Rating Valuation); Mr. Howard Karslake, F.R.I.C.S. (Special Diploma, Rating), F.R.V.A. (Assessment of Local Authority Properties); Mr. Geoffrey Lawrence, Q.C. (Lands Tribunal Rating Appeals); Mr. A. G. Mansfield, F.R.V.A., Barrister-at-Law (Rating Exemptions); and Mr. John A. F. Watson, P.P.R.I.C.S. (Dwelling-houses—Rents and Rating).

DOUBLE TAXATION: BELGIUM

A Double Taxation Convention between the United Kingdom and Belgium was signed in London on 27th March. The Convention, which is subject to ratification, provides for avoidance of double taxation on income and profits, and is expressed to take effect in the United Kingdom from 6th April, 1951. It is, in general, similar to those already made with France and other European countries. The full texts will be published shortly by H.M. Stationery Office.

DEVELOPMENT PLANS

L.C.C. Development Plan Inquiry

Objections relating to Lambeth, St. Pancras and Hampstead will begin to be heard at 10.30 a.m. on Monday, 13th April, at the inquiry into objections to the development plan for the County of London.

Oxford City Council Development Plan

The above development plan, which relates to land situate within the City of Oxford was, on 25th March, 1953, submitted to the Minister of Housing and Local Government for approval, and a certified copy thereof deposited for public inspection at the Town Hall, Oxford. Inspection can be made free of charge by all persons interested between the hours of 9.30 a.m. and 12.30 p.m. and 3 p.m. and 5 p.m. on Mondays to Fridays inclusive, and 9.30 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the plan, stating the grounds on which it is made, may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th May, 1953. Persons making any objection or representation may register their names and addresses with the Town Clerk, Town Hall, Oxford, and will then be entitled to receive notice of the eventual approval of the plan.

City of Portsmouth Development Plan

The above development plan was on 27th March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the City of Portsmouth. A certified copy of the plan as submitted for approval has been deposited for public inspection at the City Council Chambers, 1 Clarence Parade, Portsmouth, and may be inspected there free of charge at all reasonable hours. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 16th May, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk of the City of Portsmouth, and will then be entitled to receive notice of the eventual approval of the plan.

Newcastle upon Tyne County Borough Development Plan

On 5th February, 1953, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the

Minister has been deposited at the City Engineer's Department, Town Hall, Newcastle upon Tyne, 1, and will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive, and 9 a.m. and 12 noon on Saturdays. The plan became operative as from 23rd March, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 23rd March, 1953, make application to the High Court.

Wills and Bequests

Mr. O. L. Bergendorff, solicitor, of Dudley, left "so far as can at present be ascertained," estate valued at £2,865.

Mr. E. Fletcher, retired solicitor, of Ilkley, Yorks, left £27,037 (£26,910 net).

Mr. E. H. H. King, solicitor, of Bath, left £39,824 (£29,841 net).

Mr. E. G. Learoyd, solicitor, of Huddersfield, left £5,401 (£5,360 net).

OBITUARY

MR. S. H. BAINES

Mr. Stephen Humphrey Baines, solicitor, of Oxford, died on 20th March. He was admitted in 1900.

MR. H. R. BLAKER

Mr. Harry Rowsell Blaker, President of The Law Society in 1934–35, died on 30th March at the age of 80. Admitted in 1898, he practised at Henley-on-Thames and in London at Pall Mall East. He was elected a member of the Council of The Law Society in 1915, was President of the Berks, Bucks and Oxfordshire Incorporated Law Society in 1916–17, and Chairman of the Associated Provincial Law Societies in 1921–22.

Mr. G. COCKSHOTT

Mr. George Cockshott, J.P., retired solicitor, formerly of Southport, has died at his home in Church Crookham, Hampshire. He was admitted in 1898 and was chairman for several years of the North of England Children's Sanatorium and formerly hon. secretary of the Southport branch of the Royal National Lifeboat Institution.

MR. G. G. COXWELL

Mr. George Gordon Coxwell, solicitor, of Reading and Hammersmith, London, has died at the age of 79. He was admitted in 1910, and practised continually until about six weeks ago.

MR. A. DANIEL

Mr. Archibald Daniel, solicitor, of Pontypridd, has died. He was admitted in 1897.

Mr. H. JACKSON

Mr. Harold Jackson, solicitor, of Deansgate, Manchester, has died at the age of 55. He was admitted in 1925.

Mr. W. M. MEREDITH

Mr. William Martin Meredith, solicitor, of Blackley, Manchester, has died at the age of 74. He was admitted in 1925.

Mr. C. H. NEWBALD

Mr. Charles Henry Newbald, solicitor, of Newark, died on 19th March, aged 80. Admitted in 1895, he acted as Town Clerk of Newark during the first world war and had also been clerk to Newark Education Committee, St. Leonard's Hospital Trustees, Newark Municipal Charities and the governors of Newark High School for Girls.

MR. S. W. OLDERSHAW

Mr. Stewart Watson Oldershaw, solicitor, of Carey Street, London, died on 12th March. He was admitted in 1893.

Mr. H. OUTHWAITE

Mr. Herbert Outhwaite, solicitor, of Middlesbrough, died on 19th March, aged 70. He was admitted in 1905 and was a founder-member and past president of the Middlesbrough Rotary Club and a founder of the Joe Walton Boys' Club.

MR. N. PRENTICE

Mr. Noel Prentice, retired solicitor, of Rye, died on 26th March at the age of 82. He was admitted in 1895.

MR. G. SAUNDERS

Mr. Griffith Saunders, retired solicitor, died on 27th March at the age of 89.

SIR F. J. SPARKS

Sir Frederick James Sparks, Town Clerk of Portsmouth, died on 27th March at the age of 71. He was admitted in 1903, and in 1906 was appointed assistant solicitor of Southampton. In 1908 he became solicitor to Shoreditch Borough Council and less than twelve months later accepted a similar post in Portsmouth. He was promoted to the post of deputy Town Clerk of Portsmouth in 1910, and town clerk ten years later. During the war he was burdened with the post of A.R.P. controller as well as town clerk of one of the principal targets of the enemy.

Mr. G. S. WHITE

Mr. Gerald Sebastian White, O.B.E., solicitor, of the Strand, former Registrar of the High Court of Madras, died on 24th March, aged 75. He was admitted in 1941.

CASES REPORTED IN VOL. 97

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